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4 **UNITED STATES DISTRICT COURT**  
5 **WESTERN DISTRICT OF WASHINGTON**  
6 **TACOMA DIVISION**

7 UNITED STATES OF AMERICA, THE  
8 STATE OF WASHINGTON,  
9 SUQUAMISH TRIBE,

10 Plaintiffs,

11 v.

12 FOSS MARITIME COMPANY,

Defendant.

CIVIL ACTION NO:

JOINT COMPLAINT

13 The United States of America, by authority of the Attorney General through his  
14 undersigned attorneys, and at the request and on behalf of the United States Department of the  
15 Interior (“DOI”) and the Department of Commerce, National Oceanic and Atmospheric  
16 Administration (“NOAA”), in their capacity as natural resource trustees; the State of  
17 Washington Department of Ecology, on behalf of the State of Washington; and the Suquamish  
18 Tribe allege as follows:

19 **NATURE OF ACTION**

20 1. This is a civil claim for natural resource damages brought pursuant to the Oil Pollution  
21 Act of 1990 (“OPA”), 33 U.S.C. § 2701 et seq., and Washington state law for damages for  
22 injury to, destruction of, or loss of natural resources resulting from the discharge of oil into  
23 Puget Sound and the adjoining shorelines beginning on December 30, 2003 from a tank barge  
24 owned and operated by Foss Maritime Company (“Defendant”) at the Point Wells terminal in  
25 Shoreline, Washington (hereinafter “Foss Oil Spill”).  
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3 **JURISDICTION AND VENUE**

4 2. This court has jurisdiction over the subject matter of this claim pursuant to 28 U.S.C.

5 §§ 1331, 1345, and 1367 and 33 U.S.C. §§ 2717(b).

6 3. Venue is proper in this district court pursuant to 33 U.S.C. § 2717(b); and 28 U.S.C.

7 § 1391(b).

8 **PARTIES**

9 4. Defendant Foss Maritime Company is a corporation organized under the laws of the

10 state of Washington with its principal place of business located in Seattle, Washington.

11 5. Plaintiff the United States of America (“United States”) is a trustee for natural

12 resources injured, destroyed and loss as a result of Foss Oil Spill.

13 6. Plaintiff Washington State Department of Ecology is the state trustee for natural

14 resources injured, destroyed and lost as a result of the Foss Oil Spill.

15 7. Plaintiff Suquamish Tribe is the tribal trustee for natural resources injured, destroyed or

16 lost as a result of the Foss Oil Spill.

17 **GENERAL ALLEGATIONS**

18 8. On December 30, 2003, at approximately 12:05 a.m., while oil was being loaded onto

19 the Foss tank barge 248-P2 at the Point Wells terminal in Shoreline, Washington, a tank on the

20 barge overflowed. Approximately 4600 gallons of oil spilled onto the barge’s deck and flowed

21 into Puget Sound. Oil from the spill washed up onto the shore between Port Madison and

22 Indianola, Washington over the next two days. The most highly impacted area was the Doe-

23 Kag-Wats marsh.

24 9. Puget Sound is a water of the United States and a water of the state of Washington.

25 Portions of the affected shoreline, including Indianola and the Doe-Kag-Wats marsh, are

26 located on the Port Madison Indian Reservation, homeland of the Suquamish Tribe.

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2 10. The Trustees and Defendant have jointly conducted an assessment of the impact of the  
3 Foss Oil Spill on natural resources and determined that the Foss Oil Spill caused injury,  
4 destruction and loss to fish, shellfish, birds, wetlands, and other natural resources under the  
5 trusteeship of the United States, State and Suquamish Tribe.

#### 6 **RELEVANT LEGAL AUTHORITIES**

7 11. Section 1002(a) of OPA, 33 U.S.C. § 2702(a), provides that the owner or operator of  
8 any vessel or facility from which oil has been discharged into or upon the waters of the United  
9 States or adjoining shorelines is liable for damages resulting from the incident.

10 12. Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), specifies that the damages  
11 referred to in Section 1002(a) of OPA consist of damages for injury to, destruction of, loss of,  
12 or loss of use of, natural resources, including the reasonable costs of assessing the damage, and  
13 that these damages may be recovered by a United States trustee, a State trustee, and an Indian  
14 tribe trustee.

15 13. RCW 90.48.142 states in pertinent part that, any person who violates the provisions of  
16 RCW 90.48 or 90.56 and “[c]auses the death of, or injury to fish, animals, vegetation, or other  
17 resources of the state; shall be liable to pay the state and affected counties and cities [natural  
18 resource] damages.”

19 14. RCW 90.56.320 provides in pertinent part: “It shall be unlawful, except under the  
20 circumstances hereafter described in this section, for oil to enter the waters of the state from  
21 any ship or any fixed or mobile facility or installation located offshore or onshore whether  
22 publicly or privately operated, regardless of the cause of the entry or fault of the person having  
23 control over the oil, or regardless of whether it be the result of intentional or negligent conduct,  
24 accident or other cause.”

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**FIRST CLAIM FOR RELIEF**

**Natural Resource Damages Under the Oil Pollution Act**

15. The allegations set forth in paragraphs 1 through 14 are re-alleged and incorporated herein by reference.

16. The Foss tank barge 248-P2 is a vessel within the meaning of Section 1001 of OPA, 33 U.S.C. § 2701(37).

17. Defendant was the owner and/or operator of Foss tank barge 248-P2 at the time of the Foss Oil Spill and is a “responsible party” within the meaning of § 1001(32) of OPA, 33 U.S.C. § 2701(32).

18. The Defendant is liable to Plaintiffs for damages for injury to, destruction of, loss of, and loss of use of, natural resources, including the reasonable costs of assessing the damage under Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 1002(b)(2)(A).

**SECOND CLAIM FOR RELIEF**

**Natural Resource Damages Under RCW 90.48.142**

19. The allegations set forth in paragraphs 1 through 18 are re-alleged and incorporated herein by reference.

20. Defendant was the owner and/or operator of Foss tank barge 248-P2 on December 30, 2003 when the barge discharged oil into Puget Sound, a water of the state of Washington.

21. The discharge described above caused the death of, or injury to, fish, animals, vegetation, or other resources of the state.

22. Pursuant to RCW 90.48.142, the Defendant is liable to pay the state damages for these injuries.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

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2 (1) Enter a judgment in favor of Plaintiffs against Defendant, pursuant to Section  
3 1002(b)(2)(A) of the Oil Pollution Act of 1990, 33 U.S.C. § 1002(b)(2)(A), awarding Plaintiffs  
4 damages for injuries to natural resources, including the reasonable costs of assessing the  
5 damage, resulting from the release of oil during the Foss Oil Spill;

6 (2) Enter a judgment in favor of Plaintiffs against defendant, pursuant to RCW  
7 90.48.142 for natural resource damages;

8 (3) Enter a judgment in favor of Plaintiffs against Defendant for all costs of this  
9 action, including attorney's fees; and

10 (4) Award Plaintiffs such other and further relief as this Court may deem  
11 appropriate.

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13 Respectfully submitted.

14  
15 FOR THE UNITED STATES OF AMERICA

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17 United States Attorney

18 BIAN C. KIPNIS  
19 Civil Chief  
20 United States Attorney's Office  
21 Western District of Washington  
22 California Bar No.

23 ELLEN M. MAHAN  
24 Deputy Chief

25 Date: September 11, 2008

26 //s// Elizabeth L. Loeb  
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Trial Attorney  
Environmental Enforcement Section  
United States Department of Justice  
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COMPLAINT FOR NATURAL  
RESOURCE DAMAGES

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1 FOR THE STATE OF WASHINGTON  
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4 Date:

April 30, 2008

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Washington State Bar No. 35736

1 FOR THE SUQUAMISH TRIBE  
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4 Date: August 29, 2008

5 MICHELLE H. HANSEN  
6 Tribal Attorney  
7 Suquamish Tribe  
8 Washington State Bar No. 14051  
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